

STATE OF RHODE ISLAND
DEPARTMENT OF ATTORNEY GENERAL

October 28, 2009

DECISION

IN RE: AFFILIATION OF ST. JOSEPH HEALTH SERVICES
 OF RHODE ISLAND, ROGER WILLIAMS HOSPITAL, ROGER
 WILLIAMS MEDICAL CENTER, AND CHARTERCARE
 HEALTH PARTNERS

The Department of Attorney General (“the Department” or “Attorney General”) has considered the above-referenced application pursuant to both R.I. Gen. Laws §§ 23-17.14-1, *et seq.*, the Hospital Conversions Act (sometimes referred to as the “Act”) and the Attorney General’s common law responsibilities with respect to the preservation and protection of the charitable assets of St. Joseph Health Services of Rhode Island, Roger Williams Hospital, Roger Williams Medical Center and CharterCARE Health Partners. *See* R.I. Gen. Laws §§ 18-9-1, *et seq.*; *Israel v. National Board of Y.M.C.A.*, 369 A.2d 646 (R.I. 1997); *Powers v. Home for Aged Women*, 55 R.I. 187, 179 A. 610 (1935). In accordance with the reasons outlined herein, the application is APPROVED WITH CONDITIONS. In approving with conditions this application, the Attorney General notes as follows:

I. BACKGROUND

A. The Parties

RWH Hospital (hereafter “RWH”) is a 220-bed, non-profit, general acute-care hospital in Providence, Rhode Island that is engaged in medical

research and is a community-based teaching hospital affiliated with the Boston University School of Medicine. RWH also provides homecare services through Roger Williams Homecare, a home health agency operated under RWH's license. RWH is also a party to Roger Williams Radiation Therapy, LLC, a for profit joint venture with RTSI, Inc., providing radiation therapy services.

Roger Williams Medical Center (hereafter "RWMC") is a member, shareholder, partner or is otherwise affiliated with RWH (through common directors), RWMC/RWH Realty Corporation, Roger Williams Medical Center Physicians Office Building, Inc., Rosebank Corporation, Elmhurst Health Associates, Inc., Elmhurst Extended Care Facilities, Inc., and Roger Williams Medical Associates, Inc. (collectively the "RW Affiliates"). Under the terms of the affiliation, RWMC shall merge into RWH or otherwise transfer all of its assets and liabilities to RWH, and RWH will change its name to Roger Williams Medical Center. RWMC and RWH mean the same for purposes of this decision because RWH will be the surviving member if the conversion is completed. They are referred to herein as RWMC/RWH.

St. Joseph Health Services of Rhode Island (hereafter "SJHSRI") is a non-profit organization that through its unincorporated divisions operates an integrated delivery system providing a range of services including, but not limited to, a 359 bed, non-profit, general acute care hospital. SJHSRI provides acute care services at its Our Lady of Fatima Hospital division, assisted living facility services through its SJHSRI Living Center division, and specialty care services through St. Joseph Hospital for Specialty Care. SJHSRI also operates a pediatric dental

residency program affiliated with Lutheran Medical Center in New York, as well as a school of nursing education program through its St. Joseph School of Nursing division. SJHSRI is a member or shareholder of a number of non-profit and for profit entities ("SJHSRI Affiliates") including Our Lady of Fatima Ancillary Services, Inc., St. Joseph Health Services Foundation and SJH Energy LLC. SJHSRI is also a party to Northwestern Rhode Island Imaging Center, LLC, an MRI center in Johnston, Rhode Island, which is a for profit joint venture through Our Lady of Fatima Ancillary Services, Inc. SJHSRI is also a party to a Market Participation Service Agreement for SJH Energy, LLC with ISO New England, Inc. In addition, SJHSRI is a party to Southern New England Rehabilitation Services, which provides rehabilitation services through a joint venture of SJHSRI with Rhode Island Hospital.

CharterCARE Health Partners (hereafter "CharterCARE") is a nonprofit corporation formed for the purposes of being the corporate member for the affiliation of RWH and SJHSRI as described below. Collectively, RWH, RWMC, SJHSRI, and CharterCARE may be referred to herein as the "Transacting Parties" or "Applicants." The proposed affiliation of SJHSRI and RWMC/RWH, including the formation of CharterCARE is referred here as the "Proposed Conversion."

B. The Parties Post Conversion

RWH and SJHSRI will remain as two separately licensed acute care hospitals. CharterCARE will be the sole member of RWH with all reserve powers. SJHSRI shall have two (2) classes of members, a Class A Member and a

Class B Member. It is anticipated that CharterCARE will become (i) the sole member of SJH Energy LLC, (ii) the sole member of Our Lady of Fatima Ancillary Services, Inc., and (iii) the Class A Member of SJHSRI. The Roman Catholic Bishop of the Diocese of Providence or his designee will become the Class B Member of SJHSRI, with certain reserved powers relating to the continued Catholicity of SJHSRI.

CharterCARE will have a fifteen (15) member Board of Trustees. The Initial Board shall consist of eight (8) trustees designated by the Bishop and seven (7) trustees designated by the Board of Trustees of RWH/RWMC. The Initial Board members shall serve for a term of three (3) years (the "Initial Term"). Upon the expiration of the Initial Term the Trustees shall elect their successors to staggered terms such that five (5) individuals shall be elected to two (2) year terms, five (5) individuals shall be elected to three (3) year terms and five (5) individuals shall be elected to four (4) year terms. The initial Chair of CharterCARE shall be Edwin Santos and the initial Vice Chair shall be the Bishop's representative, Monsignor Paul Theroux J.C.L. Kenneth Belcher, currently the President/Chief Executive Officer (the "CEO") of RWMC/RWH was nominated to be the President and CEO of CharterCARE. John Fogarty, President and CEO of SJHSRI was nominated Executive Vice President/Chief Operating Officer (the "COO") of CharterCARE.

RWMC/RWH, SJHSRI, or any Affiliate shall require the approval of CharterCARE for the following actions: changes to the mission, philosophy and value statements, amendments to the Articles of Incorporation and Bylaws of each

entity; the appointment or removal of a member of the Board of Trustees of each entity; the capital and operating budgets of each entity and any unbudgeted transaction or expenditure by each entity in excess of an amount determined by CharterCARE from time to time; the strategic plan for each entity; the approval of the incurrence of any debt or the sale, lease, transfer or mortgage of property in excess of an amount determined by CharterCARE from time to time; the closure or relocation of any of its services and the incurrence or retention of any debt by each entity; the appointment or removal of the CEO, CFO and COO (if any) of each entity; the approval of any dissolution, affiliation, merger, reorganization or change of control of each entity; any certificate of need or similar application or filing or any material changes in services provided by each entity; any new academic affiliation of any System Member and the termination of any such affiliation.

While SJHSRI remains under Catholic sponsorship as determined by the Bishop, both CharterCARE and the Bishop shall approve the following actions: the sale, mortgaging or leasing of any real or personal property of SJHSRI having a value in excess of the relevant canonical threshold as the same may exist from time to time; the dissolution of SJHSRI; all changes with respect to the SJHSRI charity care policy, provided that the charity care policy shall at all times meet the requirements of the applicable provisions of the laws of the State of Rhode Island; all matters with respect to pastoral care including funding; any amendment to the Articles of Incorporation, Bylaws or other governing documents of any system entity that adversely affects or diminishes the requirements of the Affiliation

Agreement regarding the Catholicity provisions or the Prohibited Procedures; any amendment to the Articles of Incorporation, Bylaws or other governing documents of SJHSRI relating to the Ethical and Religious Directives for Catholic Health Care Services or the performance of Prohibited Procedures at SJHSRI; any change to the Mission Statement or the Vision and Values Statement as set forth in the Articles of Incorporation, Bylaws or other governing documents of CharterCARE or of SJHSRI.

The proposed management plan and operating structure post-conversion is a single, centralized executive and senior management team, including finance, accounting, billing, strategic planning, legal services, corporate compliance, risk management, marketing, public relations, purchasing and corporate ethics. Coordinated functions and departments post-conversion include: medical records, human resources, information technology, development, and motor services. Management consolidation is also anticipated in dietary, engineering, facilities and security.

The Transacting Parties anticipate consolidating clinical services where quality, cost and access measures justify it. There will be no reduction or elimination of clinical services as a result of the conversion. Consolidation of clinical services is anticipated to occur in the following areas: laboratory, outpatient rehabilitation, home care, hyperbaric medicine, occupational health, bariatrics, oral surgery, and hospice. It is anticipated that centralized management and clinical direction will occur in the following areas: emergency services, diagnostic imaging, psychiatry, addiction medicine, geriatrics, pharmacy, and

respiratory therapy. Selected departments will, at a minimum, be coordinated, and are anticipated to eventually be consolidated, including: cancer service, orthopedics, neurosciences, sleep lab, and pain management.

II. PROCEDURAL HISTORY

After executing their Master Affiliation Agreement on May 12, 2008, the Transacting Parties filed an Initial Application with the Attorney General and Department of Health ("DOH") on February 2, 2009, pursuant to Section 23-17.14-6 of the Rhode Island Hospital Conversions Act (the "Act"). Upon receiving the initial Application, the Attorney General and DOH reviewed the Application for completeness. On March 6, 2009, the Attorney General and DOH sent a joint letter notifying the Transacting Parties that the application was incomplete and specifying all the additional information the Transacting Parties were required to submit to complete the Application.

In the Application, SJHSRI stated that, on August 29, 2008, the Vatican had approved the Proposed Conversion of RWH and SJHSRI. The documents provided by SJHSRI in support of their claim of Vatican approval included a letter from Bishop Tobin dated July 28, 2008 to the Prefect of the Congregation for the Doctrine of the Faith at the Vatican and a response from Cardinal Levada dated August 29, 2008. In his letter to the Vatican, Bishop Tobin stated that there was no alienation of property involved in the proposed transaction, the ethical standards would remain intact and that his understanding was that the transaction did not require specific approval from the Holy See. In his response, Cardinal

Levada acknowledged receipt of Bishop Tobin's letter and stated that the Congregation was grateful for the information supplied.

In further support of the conclusion that Vatican approval was not required for the proposed affiliation, SJHSRI provided the Attorney General and DOH with a memorandum to Fr. Jordan F. Hite¹ from Msgr. Paul D. Theroux dated March 30, 2009, a letter to John Fogarty from Lawrence E. Singer dated March 31, 2009 and an opinion letter from Fr. Jordan F. Hite to Bishop Tobin. All the documents asserted that the proposed affiliation did not require approval from the Holy See and that the Bishop possessed the legal authority to retain the Catholicity of SJHSRI and to ensure fidelity to the Catholic mission at SJHSRI. Based on all the documentation provided by SJHSRI, the Attorney General accepted that Vatican approval was not required for the proposed affiliation.

Following a review of the additional information submitted by the Transacting Parties on April 17, 2009, the Attorney General and DOH sent a joint letter on May 1, 2009, within the statutorily required timeframe, notifying the Transacting Parties that the Application was deemed complete and had been accepted for review. The Hospital Conversions Act provides that the Attorney General has 180 days to complete his investigation and determine whether the application is approved, approved with conditions, or disapproved.

On May 19, 2009, The Attorney General issued a letter to SJHSRI and RWMC/RWH setting forth the documents that were deemed confidential and/or propriety, pursuant to the Act. From May 19, 2009 until the present the entire

¹ Fr. Jordan F. Hite is a Canon Law expert who evaluated the affiliation on behalf of SJHSRI and assisted in making the determination that the proposed transaction will not result in an alienation under the provisions of the Canon Law of the Catholic Church.

public records portion of the Transacting Parties' application was posted on the Attorney General's and the DOH's websites, respectively, for public inspection. The public was also invited to submit comments concerning the Proposed Conversion.

On May 21, 2009, the Attorney General and the DOH issued a public notice in the Providence Journal, informing the public that the Transacting Parties had filed an initial application with the Attorney General and DOH seeking to affiliate SJHSRI and RWMC/RWH and to create CharterCARE, that the public could submit comments to the Attorney General and DOH by June 17, 2009 and that public meetings would be held on May 27, 2009 and June 3, 2009 at Rhode Island College in Providence, RI.

The Attorney General and DOH held two joint informational public meetings within the service area of both SJHSRI and RWMC/RWH. The first informational meeting was held on May 27, 2009 from 6:00 to 8:00 pm at Rhode Island College, Providence, RI. The second informational meeting was held on June 3, 2009 from 10:00 am to noon at Rhode Island College, however, a different building on campus was used. The Transacting Parties were provided an opportunity to discuss the Proposed Conversion for the attendees. Members of the public provided comments. The Attorney General also received and considered written comments submitted by members of the public. Most of the public comments supported the Proposed Conversion. Some members of the public, however, expressed concern about the impact upon the availability of health care services as a result of the affiliation of a secular hospital and a

Catholic hospital.

The Hospital Conversions Act authorizes the Attorney General and DOH to conduct investigations to discharge their responsibilities. R.I. Gen. Laws § 23-17.14-14. During the course of the investigation, the Attorney General requested additional documents from the Transacting Parties, which the parties provided. Pursuant to R.I. General, Laws, Section 23-17.14-14 (a), the Attorney General took Statements Under Oath from the following individuals:

1. Kenneth Belcher, President and Chief Executive Officer of RWMC/RWH;
2. Edwin Santos, Chairperson of the Board of Trustees of RWMC;
3. Elaine Jones, M.D., President of Medical Staff and Trustee of RWH;
4. Adozinda Kane, Chief Financial Officer of RWH;
5. Steven Colagiovanni, M.D., Former President of the Medical Staff and current Trustee of SJHSRI;
6. John Fogarty, President and Chief Executive Officer of SJHSRI;
7. Msgr. Paul Theroux, Vice Chairperson of SJHSRI;
8. Kathleen Kenny, Chief Financial Officer of SJHSRI; and,
9. Peter DiBlasio, Jr., M.D., President of Medical Staff and Trustee of SJHSRI.

III. ATTORNEY GENERAL'S ENGAGEMENT OF CONSULTANTS

The Hospital Conversions Act states that the Attorney General may engage experts or consultants and that the Transacting Parties are responsible for the costs of such experts or consultants. R.I. Gen. Laws § 23-17.14-13. On April

21, 2009, the Attorney General issued a Request for Proposal (RFP) seeking to engage a consultant to evaluate the financial aspects of the Proposed Conversion to assist the Attorney General's determination as to whether the Boards of the Transacting Parties fulfilled their fiduciary duties concerning the financial aspects of the Proposed Conversion. On July 8, 2009, the Attorney General selected Wellspring Partners of Chicago, Illinois, as a consultant, with Shane Goss and Patrick Kendall as essential consultants for the contract.

During the course of its review, the Attorney General and its expert consultants toured the facilities operated by RWMC/RWH and SJHSRI. The consultants received and reviewed the Application and other documents, including, but not limited to, documents relating to (1) the financial condition of RWMC/RWH, (2) the financial condition of SJHSRI, (3) the actions taken by the boards and committees of RWMC/RWH and SJHSRI, and (4) studies and reports prepared by the expert consultants retained by RWMC/RWH and SJHSRI relating to the proposed affiliation. The consultants attended all or part of the Statements Under Oath for Kenneth Belcher, President and Chief Executive Officer of RWMC/RWH; Adozinda Kane, Chief Financial Officer of RWH; John Fogarty, President and Chief Executive Officer of SJHSRI; and Kathleen Kenny, Chief Financial Officer of SJHSRI. The consultants reviewed the transcripts for the Statements Under Oath that they did not attend. On October 15, 2009, the consultants provided the Attorney General with their report. A copy of the report shall be available for public inspection. R.I. Gen. Laws § 23-17.14-13.

IV. REVIEW CRITERIA

The Attorney General is vested with common law authority over charitable assets. In addition, the Hospital Conversions Act provides that the Attorney General may consider the following criteria in reviewing the proposed affiliation:

- (1) Whether the Proposed Conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state;
- (2) Whether a trustee or trustees of any charitable trust located or administered in this state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the Proposed Conversion;
- (3) Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes;
- (4) Whether the board considered the Proposed Conversion as the only alternative or as the best alternative in carrying out its mission and purposes;
- (5) Whether any conflict of interest exists concerning the Proposed Conversion relative to members of the board, officers, directors, senior management, experts or consultants engaged in connection with the Proposed Conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts;
- (6) Whether individuals described in subdivision (b)(5) were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion;
- (7) Whether the board exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;
- (8) Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the Proposed Conversion;
- (9) Whether officers, directors, board members or senior management will

receive future contracts;

(10) Whether any members of the board will retain any authority in the new hospital;

(11) Whether the board accepted fair consideration and value for any management contracts made part of the Proposed Conversion;

(12) Whether individual officers, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the Proposed Conversion;

(13) Whether the Proposed Conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a *cy pres* proceeding would be necessary;

(14) Whether the Proposed Conversion contemplates the appropriate and reasonable fair market value;

(15) Whether the Proposed Conversion was based upon appropriate valuation methods including, but not limited to, market approach, third-party report or fairness opinion;

(16) Whether the conversion is proper under the Rhode Island Nonprofit Corporation Act;

(17) Whether the conversion is proper under applicable state tax code provisions;

(18) Whether the Proposed Conversion jeopardizes the tax status of the existing hospital;

(19) Whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest;

(20) Whether officers, board members, directors, or senior management deliberately acted or failed to act in a manner that impacted negatively on the value or purchase price; and

(21) Whether the transacting parties are in compliance with the Charitable Trust Act, Chapter 9 of Title 18.

R.I. Gen. Laws §§ 23-17.14-10 *et seq.*

V. DISCUSSION, ANALYSIS, AND FINDING

A. Exercise of Fiduciary Duty by the Boards in the Process to Reach Agreement in the Proposed Conversion

The Hospital Conversions Act provides that the Attorney General may consider whether the Boards of Trustees of SJHSRI and RWMC/RWH satisfied their fiduciary duties in deciding to affiliate with each other and form CharterCARE as the corporate member and whether the Proposed Conversion complies with certain Rhode Island laws. The Hospital Conversions Act authorizes the Attorney General to consider the impact of the Proposed Conversion on the following:

Whether a trustee or trustees of any charitable trust located or administered in this state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the Proposed Conversion;

Whether the board established appropriate criteria in deciding to pursue a conversion in relation to carrying out its mission and purposes; and

Whether the board considered the Proposed Conversion as the only alternative or as the best alternative in carrying out its mission and purposes.

R.I. Gen. Laws §§ 23-17.14-10 (b) (2), (3), and (4).

The Attorney General concluded that the Board of Trustees of SJHSRI and RWMC/RWH exhibited reasonable care in the exercise of its fiduciary duty as set forth in the Act. For RWMC/RWH, Kenneth Belcher, President and Chief Executive Officer and Edwin Santos, Chairperson, testified that RWMC/RWH Board considered other mergers or affiliations. RWMC/RWH engaged the

services of a consultant, Steve Gelineau from Cambridge Research, to assist with strategic planning, including possible merger or affiliation with other hospitals, to review the alternatives that might exist in the Rhode Island health care market and to understand the best practices for this process. During the time RWH was considering possible merger or affiliation, the health care environment was becoming more difficult for all hospitals, but especially for community hospitals. Although RWMC/RWH is a teaching hospital, it is also a community hospital and has experienced financial hardship similar to the hardship experienced by the other community hospitals in Rhode Island.

RWMC/RWH contacted several hospitals in Rhode Island to query possible interests for a merger or affiliation. Exploratory affiliation discussions proceeded with a few hospitals, but failed to reach a meeting of the minds, except with SJHSRI. RWMC/RWH and SJHSRI continued affiliation discussions recognizing that both hospitals serve the same or similar geographic markets and both have similar missions, even though RWMC/RWH is a secular academic medical center and SJHSRI is a Catholic community hospital.

According to John Fogarty, CEO and President of SJHSRI and Monsignor Theroux, Vice Chairman, SJHSRI, the Board of SJHSRI discussed and analyzed the benefits and disadvantages of merging or affiliating with other hospitals. SJHSRI was experiencing financial difficulties, as well. The SJHSRI Board was emphatic throughout the process that it would maintain its Catholic sponsorship. Even though the Board was aware that a merger with a secular hospital could be challenging, the Board of SJHSRI decided to explore an affiliation model whereby

SJHSRI would retain its Catholic identity. The Board of SJHSRI and Board of RWMC/RWH considered the Proposed Conversion as the best alternative in carrying out their respective missions and purposes.

Financial considerations were among the important criteria considered by RWMC/RWH and SJHSRI in selecting an appropriate partner. Both Boards wanted a partner that would assist their organization and strengthen their financial standing. The Boards believed the right partner would help to ensure better access to capital and enhance their ability to maintain and develop facilities to ensure continued delivery of quality care to the constituencies of their organizations and community.

The Board of RWMC/RWH established criteria to use in deciding to pursue the affiliation with SJHSRI. The criteria focused on its mission to provide access to quality health care. The RWMC/RWH Board considered the culture of the two institutions, including that both community hospitals serve an underserved population. The RWMC/RWH Board, also, decided that the affiliation would need to create efficiencies that would benefit both hospitals. By comparing the operational and clinical activities within both institutions, RWMC/RWH and SJHSRI concluded that efficiencies could be achieved without reducing medical services.

The Board of SJHSRI established criteria in deciding to pursue the affiliation with RWMC/RWH that focused on its mission to provide access to quality health care, as well as its need to remain a Catholic health care provider. The SJHSRI Board considered the culture of the two institutions, including that

both community hospitals serve an underserved population. The SJHSRI Board, also, decided that the affiliation would need to create efficiencies that would benefit both hospitals. The Board identified some of the efficiencies that could be created, such as more efficient “back office operations.” The Attorney General concludes that the Board of SJHSRI and the Board of RWMC/RWH established appropriate criteria in deciding to pursue a conversion in relation to carrying out their missions and purposes.

The RWMC/RWH Board agreed not to perform four medical procedures prohibited by the Ethical and Religious Directives for Catholic Healthcare Services (“ERDs”); namely, abortion, assisted suicide, euthanasia and destruction of human embryos. RWMC/RWH considered the agreement not to perform the four prohibited procedures as an essential element in an affiliation with SJHSRI. RWMC/RWH presently does not perform abortions, assist with suicide, euthanasia, or destruction of human embryos. The Attorney General concludes that the decision of RWMC/RWH to refrain from those procedures does not reduce medical services to the community it serves or conflict with its mission.

The RWMC/RWH Board discussed and concluded that it would agree to comply with SJHSRI requirement that RWMC/RWH segregate any revenue it receives from medical procedures that are not condoned by the ERDs, but are not prohibited by the ERDs, such as sterilizations. Although the RWMC/RWH Board satisfied its fiduciary duty during the course of agreeing to segregate revenue from medical procedures not condoned by the ERDs, it has yet to develop the procedure to segregate such revenue from SJHSRI. As a condition

of approval of the application, RWMC/RWH shall develop procedures consistent with the Affiliation Agreement so that revenue from medical procedures that are not condoned, but are not prohibited by the ERDs and are performed at RWMC/RWH will not go to SJHSRI.

SJHSRI and RWMC/RWH provided their respective Boards of Trustees and senior management training concerning their fiduciary duty, governance structure and conflicts of interest. The Board members appeared to be aware of their duty to provide oversight of the leadership of the institutions and strategic planning, as well as governance for compliance issues and the financial viability of their respective hospitals. As a condition of approval of the application, SJHSRI, RWMC/RWH and CharterCARE shall provide training at least annually to Board members and senior management concerning their fiduciary duty to their respective hospitals and corporate members, including the importance of SJHSRI as a community asset.

Throughout the drafting of the Affiliation Agreement and through the Attorney General's review, the Board of SJHSRI and the Board of WMC/RWH continued to discuss the Proposed Conversion. Kenneth Belcher and Edwin Santos reported that RWMC/RWH have continually reviewed and planned for the Proposed Conversion. Elaine Jones, MD, President of the Medical Staff and Trustee of RWMC/RWH, was not a member of the RWMC/RWH Board when the process to consider mergers or affiliations was begun. While she has been a Trustee, however, she reported that the Board continually reviewed the Proposed Conversion to ensure that it would improve the viability of RWMC/RWH. John Fogarty, Monsignor Paul Theroux and Peter DiBlasio, Jr., M.D., President of Medical Staff and Trustee of SJHSRI reported that the SJHSRI

Board continues to review the Proposed Conversion to ensure that it will continue its Catholic mission and remain viable into the future. The Board of SJHSRI and the Board for RWMC/RWH are mindful that the economic crisis which started before the 2008 economic downturn is continuing and that the survival of their hospitals may depend upon the success of the Proposed Conversion.

On or about October 22, 2009, the Transacting Parties submitted a draft management agreement between SJHSRI, RWMC/RWH, and CharterCARE. The Boards need to continue to conduct due diligence concerning the management agreement among SJHSRI, RWMS/RWH, and CharterCARE. The Boards need to conduct due diligence concerning the not-yet-drafted executive compensation agreements for CharterCARE. The Boards should not permit the executive compensation agreements to burden either or both hospitals. The Boards have engaged a consultant to assist them with the selection of a Chief Medical Officer, a new position that neither SJHSRI nor RWMC/RWH previously included in their respective organizations. As a condition of approval of the application, the Boards of CharterCARE, SJHSRI, and RWMC/RWH shall continue due diligence concerning executive compensation for the senior management and provide the Attorney General copies of the executive compensation agreements.

SJHSRI and RWMC/RWH report that they intend to affiliate in January 2010. The Boards plan to integrate back office operations, such as accounts payable, accounts receivable, human resources and administrative functions, as well as leadership at the hospitals. This process will take time and the Boards must continue their due diligence as they have demonstrated to this point. Due to the financial difficulties SJHSRI and

RWMC/RWH are experiencing, it would be prejudicial to the Transacting Parties to delay the approval of the application until there is complete integration. In fact, complete integration from the affiliation will take time.

The Attorney General's expert concluded that SJHSRI and RWMC/RWH have a better chance of surviving in this difficult economic environment together than as free-standing hospitals. Thus, the Attorney General approves this application on condition that CharterCARE, SJHSRI, and RWMC/RWH each has a continuing duty to notify the Attorney General in the event that any of the facts submitted as part of the application or in the Statements Under Oath are changed, modified or amended during the next three (3) years; that CharterCARE, SJHSRI and RWMC/RWH agree that the Attorney General has continuing oversight of these conditions; and that CharterCARE, SJHSRI and RWMC/RWH are responsible for any reasonable costs incurred by the Attorney General to enforce any of these conditions.

B. Exercise Of Fiduciary Duty By The Boards Related To Finances

The Hospital Conversions Act provides that in reviewing an application of a conversion involving a hospital in which the transacting parties are limited to not-for-profit corporations, the Attorney General may consider:

Whether the Proposed Conversion will harm the public's interest in trust property given, devised, or bequeathed to the existing hospital for charitable, educational or religious purposes located or administered in this state; and,

Whether a trustee or trustees of any charitable trust located or administered in this state will be deemed to have exercised reasonable care, diligence, and prudence in performing as a fiduciary in connection with the Proposed Conversion.

R.I. Gen. Laws §§ 23-17.14-10 (b) (1) and (2).

Both RWMC/RWH and SJHSRI expressed concern for their continued ability to serve the citizens of Rhode Island if they were to remain as stand-alone organizations. Despite difficult economic hurdles, RWMC/RWH and SJHSRI have taken significant actions during 2009 to attempt to improve their bottom lines.

Even after having taken such significant actions to improve their organization's financial position, it appears that, in the minds of the executives of RWMC/RWH and SJHSRI as well as the Board members of both organizations, there would be strength in numbers as well as volume in the ability to achieve their goals of better accessing capital and building financial strength through the proposed affiliation. Through the information presented by the parties in the initial application, as well as additional documentation provided and subsequent statements under oath, the parties provided indications as to how they believe they will be better able to achieve their goals of greater financial stability and overall strength as an organization through this affiliation. Among the more important assumptions developed by the parties in determining the proposed affiliation is in the best interests of the hospitals and the constituencies they serve are the following, which will be discussed in turn: (1) projections contained in the pro formas prepared by RWMC/RWH and SJHSRI of a growth factor of patient volume of 0% per year; (2) efficiencies that can be achieved through the proposed affiliation that are projected to realize savings of approximately \$15 million over the course of the first five years of operation; and (3) the impact upon the ability of the parties to improve their access to capital and financing in order to continue to provide charitable services to the

communities they serve, as well as to be able to maintain existing facilities if they were a combined entity.

In order to assess the reasonableness of the financial due diligence as well as the projections of the parties with respect to efficiencies the parties assert may be realized from the proposed affiliation, the Attorney General retained the expert services of Wellspring Partners, after seeking proposals from qualified firms. The experts' scope of work in assisting the Attorney General included, but was not limited to, review of: (1) due diligence of the parties to the proposed transaction, including review of financial documents, along with any business and/or strategic planning of the parties to the proposed affiliation; (2) fair consideration and value of any management contracts made part of the proposed transaction; (3) the financial aspects of the proposed transaction; and (4) assisting the Attorney General in deciding if the hospitals would be more viable if they affiliated. In the course of performing these functions, the Attorney General's experts reviewed a substantial amount of materials including, but not limited to, the Initial Application, supplemental materials and financial data provided by the parties to the Attorney General and the Department of Health, numerous relevant industry data, information provided through Statements Under Oath of representatives of RWMC/RWH and SJHSRI Health Services, as well as site visits to the facilities of RWMC/RWH and SJHSRI Health Services.

In developing their projections as to financial viability of the combined entities, RWMC/RWH and SJHSRI developed pro formas, projecting the financial operations of the combined entities post-affiliation under CharterCARE. These pro formas included the major assumptions developed by the parties, first based upon a 0% growth in

admissions, no change in the current payor mix each organization currently has in place and not considering any particular rate bump that might be associated with a larger organization negotiating contracts with the third-party payors. Instead, in developing their financial projections, the parties took a more conservative approach and included what they believed would be a normal reimbursement increase from payors. After consideration of current economic conditions, given declined inpatient volume and revenue and the potential for health care reforms coming in the near term, the Boards determined that the more reasonable scenario to use for purposes of projections would be a 0% growth factor. The parties have indicated that, even with a 0% patient growth factor, there is a contribution margin that would contribute to the capital availability of the two organizations. Further, the Boards of Directors and executives of both organizations have determined that their 0% patient growth factor is reasonable and supportable. The Attorney General's experts have considered the data and reasoning used by the parties in determining this 0% growth factor, the unlikelihood of any change in payor mix and the likelihood that the contractual allowances from payors will remain stable all to be reasonable assumptions.

On the expense side of the equation, the Boards of RWMC/RWH and SJHSRI, as well as the executive officers, sought the assistance of consultants to work with them through the process of what potential efficiencies could be achieved by an affiliation of their organizations. The parties realized that, by reducing inefficiencies in their operations, the hospitals could strengthen their economic base and put themselves in a position to withstand lower reimbursement rates and rising costs. It is a reasonable assumption that a larger hospital system can deal with rising costs better than a smaller

system. Although the parties understood that there was some information that could not be shared as to particular areas of efficiencies that could be realized in a full merger (such as relates to contract negotiations), they nonetheless developed general assumptions around the types of savings that could be able to be obtained by the two organizations coming together. In reaching their determinations, the parties also sought the assistance of consultants to review similar types of mergers and affiliations that have occurred to better understand the nature of efficiencies and savings that could be achieved. The results of these determinations were included in the pro formas prepared by the parties and presented to the Attorney General and the Department of Health.

The executives and Boards of both organizations also determined that as a merged entity the organizations have projected significant savings which are expected to grow to \$15 million annually within five years of their operations together. An initial \$7 million in savings has been identified and targeted thus far. These savings are anticipated to be achieved primarily through consolidation and combination of back office, support services and clinical functions of the two organizations, some of which will be handled jointly through CharterCARE under a management agreement between CharterCARE and the affiliating hospital organizations. This management agreement is a lynchpin of the successful affiliation of the parties as it is anticipated to bring together various management and other functions routinely handled by each of the organizations, with the intention of achieving significant savings through elimination of duplication of efforts by each of the organizations. Under the projections as to the operation of this agreement once the affiliation is complete a smaller group of individuals under the management and oversight of CharterCARE would now handle these types of administrative activities.

As of this time, however, the parties have not finalized the terms of the management agreement that will govern the operations to be performed on behalf of, and be paid for by, RWMC/RWH and SJHSRIs. The parties have established a budget for CharterCARE with the promise that all of the costs to operate CharterCARE will be paid by RWMC/RWH and SJHSRI on a 50/50 basis. As the parties are preparing CharterCARE to be operational as of January, 2010, the parties stated they are continuing to work to complete the terms of this agreement. The parties have indicated they have a target date to finalize this agreement by the end of October 2009, at least as for initial matters that will immediately fall under CharterCARE's auspices. Once this agreement is finalized and CharterCARE is operational, the parties have stated that the agreement will expand as new services and functions are brought into CharterCARE from the affiliate hospitals, such as human resources, information technology, legal services, financial services, etc. It is anticipated by the parties that back of the house/administrative functions will be consolidated before clinical functions. It is understood by the parties that the major driver of the efficiencies will not be consolidation of clinical functions. As this process has moved forward, the parties continue to work on a business plan of efficiency in concert with moving forward on the strategic plan for the organizations. They plan to have the next phase of bringing together programs completed at the end of November 2009.

It is of significant concern that the management agreement among CharterCARE, RWMC/RWH and SJHSRI has not yet been finalized given the importance to the operations of the organizations post-affiliation and that the terms of the agreement be fair and equitable to both RWMC/RWH and SJHSRI. Given the fact that CharterCARE is

not anticipated to be operational until January 2010, the Attorney General does not determine the fact that the agreement is not yet in final form to be fatal to approval of the proposed affiliation. In order to ensure fairness to the affiliating organizations and the constituencies they serve, however, a condition of approval requires the parties to finalize the management agreement and submit it to the Attorney General for review and approval (following the Attorney General's consultation with his experts) no later than 90 days following approval of the affiliation.

It is also of concern to the Attorney General in reviewing the Transacting Parties' plan of efficiencies that less than half of the planned savings of \$15 million have been targeted, while the remainder has not yet been identified. During the course of the Attorney General's investigation of this proposed affiliation, interviews were conducted of executives of both organizations to better understand the development of the remaining projected \$8 million in anticipated savings. The Transacting Parties stated that they are confident in their ability to achieve these remaining savings through joint contracting for the purchase of supplies, services and items such as what brand of sutures or types of implant devices the organization might use across the Transacting Parties to save costs, which they cannot do until they are one organization. This approach comes from the research the executives and Boards conducted with their consultants to review similar types of merger/affiliations and analyze the areas where efficiencies and savings can be achieved. In their studies, they indicate they have seen organizations that have far exceeded the savings projected by the parties for this potential affiliation. Further, the Transacting Parties informed the Attorney General that some discussions with current vendors have occurred. The Transacting Parties asserted that some vendors indicated that

they might be willing to renegotiate contracts. The Transacting Parties asserted that there will be vendor savings for an affiliated, larger, organization. Moreover, the Transacting Parties concluded that they will be in a more superior negotiating position with respect to reimbursement rates from medical payers as well with 24% of the Providence market post affiliation. The Transacting Parties have also discussed consolidations of some services offered by the two organizations that will be able to use “best practices” as well as to minimize expense and improve overall turnaround time. In addition, the Transacting Parties have discussed the concept of developing centers of excellence in certain areas to allow the two organizations to collaborate on the services provided to the community. This understanding is supplemented by the experience of leadership, particularly Kenneth Belcher, who has had experience in merging organizations and has participated in achieving such efficiencies. Of those interviewed in both organizations, all have expressed great confidence in the leadership they will have going forward in achieving the projected efficiencies. It is with this understanding that there are always some uncertainties to be faced in an affiliation of this nature, particularly given the difficult financial circumstances in which many hospital organizations find themselves today. The Transacting Parties also understand, however, and the Attorney General’s experts conclude, that, even with appropriate and reasonable financial assumptions developed by the parties for the proposed affiliation, the ability to realize the savings will come from the execution of their plans to achieve them without compromising access and quality of care. Moreover, the Transacting Parties have unequivocally stated that they would not be able to attain the types of efficiencies they hope to attain together if they were to continue as stand alone organizations.

In considering whether to approve the Proposed Conversion it is noteworthy that both RWMC/RWH and SJHSRI have recently experienced a downgrade in their outlook by Standard and Poors from stable to negative. S&P did maintain a BB long-term rating on RWMC/RWH's bonds, which is considered non-investment grade speculative due to the hospital's weaker level of liquidity through the first nine months of 2009 compared to prior periods. In reviewing the situation of SJHSRI, a similar determination was made by S&P as to SJHSRI bonds not being investment grade. Their situation is due to the negative performance of SJHSRI over the past two years. Nonetheless, S&P does provide indications that the merger of RWMC/RWH and SJHSRI would provide additional cost savings and improve their financial profile. The Attorney General's consultants have reviewed these pronouncements by S&P and agree that the financial viability of RWMC/RWH and SJHSRI would be significantly improved as a joined entity and the entities would thus be stronger together than if they were to remain stand alone organizations.

While recognizing that the Transacting Parties are not facing the best of financial times and circumstances, they have not only taken significant steps to improve their bottom lines prior to commencing the Proposed Conversion, but they have also looked carefully into the future to plan necessary steps to remain financially viable and continue their services to the communities they serve. The recent actions of RWMC/RWH and SJHSRI to improve their bottom lines and financial stability instill a level of confidence in their abilities to move forward together as a viable organization. However, the parties must continue with their efforts of due diligence and responsibility toward RWMC/RWH and SJHSRI and their constituencies and demonstrate this to the Attorney General by

identifying the remaining \$8 million in savings and presenting them to the Attorney General for review within 180 days following approval of the affiliation, and providing the finalized management agreement to the Attorney General for review within 90 days following approval of the affiliation, with the cost of any expert assistance for the Attorney General to review these documents to be borne by the Transacting Parties.

C. Exercise Of Fiduciary Duty By The Boards Related To Conflicts of Interests

The Hospital Conversion Act permits the Attorney General to consider:

Whether any conflict of interest exists concerning the Proposed Conversion relative to members of the board, officers, directors, senior management, experts or consultants engaged in connection with the Proposed Conversion including, but not limited to, attorneys, accountants, investment bankers, actuaries, health care experts, or industry analysts; and

Whether the individuals who represented the existing hospital in negotiations avoided conflicts of interest.

R.I. Gen. Laws §§ 23-17.14-10 (b) (5) and (19).

The members of the board, officers, directors and senior management for the SJHSRI and RWMC/RWH, respectively, have a fiduciary duty to their respective Transacting Parties, which includes acting in the best interest of SJHSRI, not engaging in self dealing and avoiding conflicts of interest. Members of the board, officers, directors and senior management for RWMC/RWH and SJHSRI executed Conflicts of Interest Statements with respect to the Proposed Conversion. The Conflicts of Interest Statements required the affiants to provide information concerning their individual and their immediate families' relationships with the Transacting Parties, with vendors engaged in business with the Transacting Parties and with any future involvement with

the Transacting Parties. A possible benefit may be a promise of future employment in the resultant entity and/or an attractive retirement or severance package.

The Attorney General reviewed the executed Conflicts of Interest Statements, application and Statements Under Oath to determine whether the affiants acted in the best interest of the entity, engaged in self-dealing or anticipated receiving benefits for supporting the Proposed Conversion. During the investigation, the Attorney General learned that Steven Colagiovanni, M.D., a member of the Board of Trustees of SJHS, was a defendant in civil litigation involving an alleged breach of contract between Consultants in Urology, Inc., a third party vendor and SJHS. The plaintiff in the litigation alleged that Dr. Colagiovanni was a shareholder in the third party vendor and that he benefited from the alleged contract between the third party vendor and SJHSRI. Dr. Colagiovanni stated in his Conflicts of Interest Statement that he was not involved in any financial transactions with SJHS. The Attorney General investigated this discrepancy.

Dr. Colagiovanni testified under oath that he was not an investor, shareholder or owner of the third party vendor. He stated that for a period of time he considered becoming an investor in the third party vendor. He testified that he recused himself from any discussion concerning this third party vendor by the SJHSRI Board of Trustees. During the relevant years of the dispute, Dr. Colagiovanni declared his potential interest in the third party vendor on his annual conflict of interest forms filed with SJHSRI. The civil dispute is not related to the SJHSRI Board's decision to affiliate with RWMC/RWH. Thus, the Attorney General determines that Dr. Colagiovanni's potential investment in the third party vendor does not constitute a conflict of interest related to the Proposed

Conversion. The Attorney General proffers no opinion regarding the civil litigation that is not part of the Proposed Conversion.

Based upon the review of the executed Conflicts of Interest Statements, Statements Under Oath, supplemental documents and application, the Attorney General determines that there is no evidence that the members of the board, officers, directors and senior management for RWMC/RWH and SJHSRI violated their fiduciary duty concerning conflicts of interest related to the Proposed Conversion.

D. Exercise Of Fiduciary Duty By The Boards Related To Engaging Consultant and Experts

The Hospital Conversion Act permits the Attorney General to consider:

Whether the hospital boards exercised due care in engaging consultants with the appropriate level of independence, education, and experience in similar conversions;

Whether individual officer, directors, board members or senior management engaged legal counsel to consider their individual rights or duties in acting in their capacity as a fiduciary in connection with the Proposed Conversion; and,

Whether the board exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the Proposed Conversion.

R.I. Gen. Laws §§ 23-17.14-10 (b) (7), (8) and (12).

Throughout the process of evaluating whether to affiliate, the Boards of SJHSRI and RWMC/RWH engaged the following consultants to assist them with the strategic planning for the Proposed Conversion: Applied Management Systems, Inc., Deloitte Corporate Finance, Ernest & Young, LLP, Genesis Communications, Kalandavis LLC, and McGladrey & Pullen, CPAs. SJHSRI engaged Fr. Jordan Hite, JCL, JD, Lawrence

E. Singer, P.C., and Father Russell E. Smith to address issues related to Catholicity. The Boards considered the consultants' recommendation and adopted those that would meet the criteria that the Boards had established. The Board of SJHSRI and Board of RWMC/RWH exercised due care in accepting assumptions and conclusions provided by consultants engaged to assist in the Proposed Conversion.

The Transacting Parties repeatedly cited the research conducted by Cambridge Research Institute as having been fundamental in formalizing their initial discussions and affiliation planning. Deloitte Corporate Finance was brought in by the hospitals to help to prepare the pro formas and to evaluate the underlying assumptions. The parties stated that they thought that their consultants' projected savings were conservative. Furthermore, the Transacting Parties testified that they will continue to use consultants where appropriate, such as to assist in determining the proper salary ranges for their senior management team. Several consultants retained by the Transacting Parties had considerable experience with organizations the size of RWH and SJHSRI. These consultants assisted the hospitals in identifying potential areas of consolidation. Based on the information and documentation provided by the Transacting Parties, the Boards of RWH and SJHSRI acted responsibly and appropriately in selecting the consultants who assisted them. The consultants provided the Transacting Parties with necessary analysis and advisory services and possessed the appropriate level of independence, education and experience in similar conversions.

The individual officers, directors, board members and senior management of SJHSRI and RWMC/RWH engaged legal counsel throughout the pendency of the Proposed Conversion. The Attorney General concluded that individual officer, directors,

board members or senior management considered their individual rights or fiduciary duties in the process of engaging legal counsel in connection with the proposed.

E. Exercise Of Fiduciary Duty By The Boards Related To Operations Post Conversion

The Hospital Conversions Act also permits the Attorney General to consider:

Whether individuals described in subdivision (b)(5) [members of the board, officers, directors, senior management, experts or consultants] were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion;

Whether officers, directors, board members or senior management will receive future contracts;

Whether any members of the Board retain any authority in the new hospital; and,

Whether the Board accepted fair consideration and value for any management contracts made part of the Proposed Conversion.

R.I. Gen. Laws §§ 23-17.14-10 (b) (6), (9), (10), and (11).

A review of the Initial Application and additional materials submitted through the parties (including those submitted to the Department of Health in its Change of Effective Control review and information and materials submitted in the process of providing Statements Under Oath to the Attorney General) indicates that no members of the board, officers, directors, senior management of either of the Transacting Parties or experts to consultants engaged by them in connection with the proposed transaction were provided with any contracts or consulting agreements or arrangements that included any pecuniary awards based in any way on the contingency of the completion of the transaction.

This finding is made despite the fact that certain current senior management of both of the Transacting Parties will become part of the executive staff of CharterCARE subsequent to approval of the proposed transaction. For example, Kenneth Belcher, current Chief Executive Officer of RWMC/RWH Medical Center, will become the Chief Executive Officer of CharterCARE and will also retain his position as CEO of RWMC/RWH. In addition, John Fogarty, current Chief Executive Officer of SJHSRI Health Services will become Executive Vice President of CharterCARE. The Transacting Parties advised the Attorney General that a Chief Financial Officer has not yet been selected, however, the parties are in the process of interviewing the Chief Financial Officers from both organizations who have expressed an interest in the position.

The Transacting Parties informed the Attorney General that CharterCARE's management is also using the services of consultants in the selection of executives to serve in CharterCARE. Similar searches and interviews will be conducted from among those individuals interested from each of the two hospitals in the positions of Chief Information Officer and Vice President of Strategic Planning. In addition, the parties intend to hire a Chief Medical Officer for CharterCARE, which will be a new position.

Although the parties have determined that the positions and basic responsibilities of both Kenneth Belcher and John Fogarty will increase from their current responsibilities, no contracts have been provided to the Attorney General for either of these individuals that delineate either their new responsibilities or the compensation each will receive for them. Both Mr. Santos, Chairperson for CharterCARE, and Monsignor Theroux, Vice Chairperson for CharterCARE, acknowledged that due to these new

responsibilities, Kenneth Belcher and John Fogarty should receive increased compensation from their current positions.

The Transacting Parties recognized that, in determining the appropriate level of compensation for executives of CharterCARE, it would be necessary to examine compensation for executives in similar situations. The Transacting Parties did not provide any definitive information concerning the anticipated amount compensation CharterCARE executives may receive. The Transacting Parties indicated that they expect to utilize the services of compensation consultants to assess the marketplace to make a determination as to appropriate compensation for Mr. Belcher, Mr. Fogarty, and other new CharterCARE executives.

The Transacting Parties expect to achieve certain efficiencies in their combined operations, particularly by eliminating duplication of efforts in the new organization. They expected that there would be some movement of personnel as a result of consolidation of certain back office/administrative areas such as executive, legal, human resources, chief financial officer, chief information officer and strategic planning. The Transacting Parties explained to the Attorney General that with respect to these individuals who do not obtain an executive position in CharterCARE, the parties would first attempt to find a position within the organization for them. If there is no position in which they can be appropriately placed, such individuals may be required to have their employment with the organizations terminated. Certain of these individuals have existing employment contracts that contain severance provisions, which the Transacting Parties stated they will honor.

For those individuals who do not have contracts containing severance clauses and provisions, appropriate terms will be determined between the organizations and individuals. Given that no management contracts for CharterCARE executives were provided to the Attorney General, the Attorney General is unable at this time to ascertain whether the Board accepted fair consideration and value for any management contracts made part of the Proposed Conversion. Because the Transacting Parties have retained consultants to evaluate appropriate compensation for the CharterCARE executives, the Attorney General does not consider this to be an incurable defect in the Boards' fiduciary duties. As a condition of approval of the application, within three months following approval of the affiliation, the Boards of CharterCARE, SJHSRI, and RWMC/RWH shall develop procedures to determine executive compensation for the senior management and provide the Attorney General copies of those procedures and the executive compensation agreements.

With respect to the ultimate Board of Directors of CharterCARE, the Transacting Parties apprised the Attorney General that the current Chairman of the Board of RWMC/RWH, Edwin Santos, will be the Chairman of the Board of Directors of CharterCARE. Although others on the current RWMC/RWH Board could be on both CharterCARE and RWH Board of Directors, Mr. Santos does not anticipate he will be involved with the RWH Board.

With respect to other potential members of the Board of CharterCARE, seven (7) members will be representatives from RWMC/RWH for which a process is currently in place to nominate these individuals. The remaining eight (8) members will come from the ranks of SJHSRI, with one of them being the Bishop of Providence, the selection of

which will be subject to similar approval processes that are being used by RWMC/RWH. There was no indication that members of the board, officers, directors, senior management, experts or consultants were provided with contracts or consulting agreements or arrangements which included pecuniary rewards based in whole, or in part on the contingency of the completion of the conversion.

F. Proposed Conversion's Compliance with Rhode Island Laws

The Hospital Conversions Act provides that the Attorney General may consider whether the Proposed Conversion complies with certain Rhode Island laws. The Hospital Conversions Act authorizes the Attorney General to consider the Proposed Conversion's impact on corporate, tax, and charitable trust laws as follows:

Whether the Proposed Conversion results in an abandonment of the original purposes of the existing hospital or whether a resulting entity will depart from the traditional purposes and mission of the existing hospital such that a cy pres proceeding would be necessary;

Whether the conversion is proper under the Rhode Island Nonprofit Corporation 17;

Whether the conversion is proper under applicable state tax code provisions;

Whether the Proposed Conversion jeopardizes the tax status of the existing hospital; and,

Whether the transacting parties are in compliance with the Charitable Trust Act, chapter 9 of title 18.

R.I. Gen. Laws §§ 23-17.14-10 (b) (13), (16), (17), (18), and (21).

SJHSRI and RWMC/RWH are non-profit corporations organized pursuant to R.I. General Laws § 7-6-1 et seq. SJHSRI is a non-profit corporation in good standing with

the Rhode Island Secretary of State. RWMC/RWH is a non-profit corporation in good standing with the Rhode Island Secretary of State. Post conversion, Mr. Belcher and Mr. Santos stated that the RWMC/RWH would continue to be organized as a non-profit corporation. Post conversion, Mr. Fogarty and Monsignor Theroux stated that SJHSRI would continue to be organized as a non-profit corporation. The Proposed Conversion does not affect the nonprofit corporate status of SJHSRI or RWMC/RWH. CharterCARE is the intended sole corporate member of RWMC/RWH post conversion and the corporate member for SJHSRI, with the Bishop of the Diocese of Providence maintaining reserve power over the Catholicity of SJHSRI post conversion. CharterCARE is also a non-profit corporation. The Rhode Island Nonprofit Corporation permits non-profit corporations to affiliate. R.I. Gen. Laws § 7-6-43. Thus, the Proposed Conversion is proper under the Rhode Island Nonprofit Corporation.

According to the documents produced by the Transacting Parties and the Statements Under Oath, the mission and purposes of RWMC/RWH will not change. Post conversion, Mr. Belcher and Mr. Santos stated that the RWMC/RWH would continue to fulfill its mission, which they consider to be providing quality health care and access to all in the communities that they serve. Post conversion, Mr. Fogarty and Monsignor Theroux confirmed that the SJHSRI would continue to fulfill its Catholic mission, which they consider to be assisting and enhancing the health of people in the community in the tradition of the Catholic healthcare services. Neither SJHSRI nor RWMC/RWH are abandoning their original purposes and clearly affirm that they will continue their respective missions.

As non-profit hospitals, SJHSRI and RWMC/RWH are exempt from the Rhode Island corporate tax code. R.I. Gen. Laws § 44-11-1 (1). SJHSRI and RWMC/RWH will remain non-profit hospitals after the Proposed Conversion is completed. The SJHSRI's and RWMC/RWHs' Proposed Conversion is proper under applicable state tax code provisions. Furthermore, the Proposed Conversion will not jeopardize the tax status of either SJHSRI or RWMC/RWH, both of which will continue with their missions and remain non-profit hospitals. Also, both SJHSRI and RWMC/RWH receive tax exempt status from their respective municipalities.

SJHSRI and RWMC/RWH both have charitable assets whose values fluctuate depending upon donations and investments. Some of the donations are general and can be used by the entities for any purpose. It is settled law that any such benefits not specifically designated for a particular purpose by the donor(s) received by each of the Affiliate Hospitals are given to the organization in furtherance of the purposes of the organization. See Rhode Island Hospital Trust Co. v. Williams, 50 R.I. 385, 148 A. 189,191 (1929). Some of the donations are restricted and the use of those gifts is limited to the donor's intent.

Although SJH and RWH will retain their individual licenses as hospitals, SJH and RWMC/RWH will have a change of control greater than twenty percent for the operation of each entity. CharterCARE will be the sole corporate member and have exclusive authority to determine how assets will be expended. At the time that donors gave to either SJHSRI or RWMC/RWH, a different entity was in control of the separate hospitals.

Historically, a *Cy Pres* petition to Rhode Island Superior Court is the legal vehicle to determine whether a donor's intent can be satisfied and if not determine the next best alternative to honor the donor's intent. Because of the change of control of SJH and RWMC/RWH, a *Cy Pres* petition acknowledging that each entity has charitable assets and that post conversion, SJHSRI and RWMC/RWH will honor the intent of the donors intent is the appropriate vehicle. As a condition of approval of the application, SJHSRI and RWMC/RWH must receive RI Superior Court's approval of a *cy pres* petition related to the Proposed Conversion of SJHSRI and RWMC/RWH prior to the Affiliation and provide notice of the *cy pres* petition to the Attorney General.

VI. CONCLUSION

As stated above, the Attorney General has jurisdiction to review the Proposed Conversion of SJHSRI and RWMC/RWH. Based upon the Hospital Conversions Act, RI Gen. Laws §23-17.14-1 et seq. and common law, the Attorney General determines that the application for the Proposed Conversion of SJHSRI and RWMC/RWH with CharterCARE Health Partners as the sole corporate member of RWMC/RWH and the Part A member for SJHSRI and the Bishop of the Diocese as the Part B member for SJHSRI, is approved subject to the following conditions:

1. That SJHSRI and RWMC/RWH shall receive RI Superior Court approval of a *cy pres* petition related to the Proposed Conversion of SJHSRI and RWMC/RWH prior to the Affiliation and provide notice of the *cy pres* petition to the Attorney General;

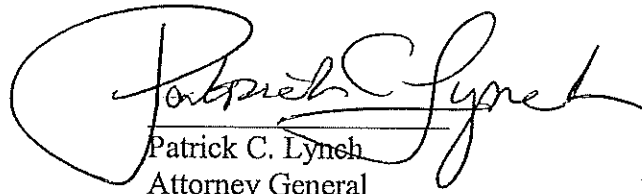
2. That SJHSRI, RWMC/RWH and CharterCARE shall provide training at least annually to board members and senior management concerning their fiduciary duty to their respective hospitals and corporate member, including the importance of them as a community asset;
3. That SJHSRI and RWMC/RWH, shall establish a community advisory council to provide advice to the board concerning community needs and access to quality health care;
4. That CharterCARE, SJHSRI, and RWMC/RWH shall fulfill all their obligations, subject to the Reimbursement Agreement with the Department of Attorney General prior to the affiliation;
5. That for the first two years following the affiliation, SJHSRI and RWMC/RWH shall provide the Attorney General quarterly reports concerning cross-credentialing;
6. That for the first two years following the affiliation, SJHRSI and RWMC/RWH shall provide the Attorney General reports concerning any coordination of clinical services;
7. That within six months following approval of the affiliation, SJHSRI, RWMC/RWH, and CharterCARE Health Partners shall develop and provide to the Attorney General policies and procedures to address any perception that individuals affiliated with one of the affiliated hospitals may have bias toward it rather than the other affiliate hospital;
8. That within three months following approval of the affiliation, SJHSRI, RWMC/RWH, and CharterCARE will provide the Attorney General with

reports concerning the management agreement, including but not limited to, management fees and the management agreement between SJHSRI, RWMC/RWH and CharterCARE.

9. That within three months following approval of the affiliation, the Boards of CharterCARE, SJHSRI, and RWMC/RWH shall develop procedures to determine executive compensation for the senior management and provide the Attorney General copies of the those procedures and the executive compensation agreements so that the Attorney General can determine whether the transacting parties accepted fair consideration and value for any management contracts made part of the Proposed Conversion;
10. That within six months following approval of the affiliation, RWMC/RWH shall develop procedures consistent with the Affiliation Agreement to ensure that revenue will not flow to SJHSRI from medical procedures performed at RWMC/RWH that are not condoned but are not prohibited by the Ethical and Religious Directives for Catholic Healthcare Services;
11. That within six months following approval of the affiliation, CharterCARE will identify the remaining \$8 million in projected areas of efficiencies and provide this information to the Attorney General for review;
12. That CharterCARE, SJHSRI, and RWMC/RWH each has a continuing duty to notify the Department of Attorney General in the event that any of the facts submitted as part of the application or in the Statements Under Oath are changed, modified, or amended during the next three (3) years;

13. That CharterCARE, SJHSRI, and RWMC/RWH shall agree that the Attorney General has continuing oversight of these conditions; and,
14. That CharterCARE, SJHSRI, and RWMC/RWH shall be responsible for any reasonable costs the Attorney General incurs to retain the services of consultants and/or experts to review any addition information submitted and/or to enforce any of the within conditions.

The Attorney General's APPROVAL WITH CONDITIONS is contingent upon all of the above conditions being satisfied. In the event that the above conditions are not satisfied, then the Attorney General may take such action as is appropriate.



Patrick C. Lynch
Attorney General
State of Rhode Island